

PT 97-26  
Tax Type: PROPERTY TAX  
Issue: Educational Ownership/Use

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS

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SHERWOOD CONSERVATORY	)	
OF MUSIC,	)	Docket No: 94-16-1235
APPLICANT	)	
	)	
v.	)	Real Estate Exemption
	)	for Part of 1994 Tax Year
	)	
DEPARTMENT OF REVENUE	)	P.I.N.: 17-15-307-026
STATE OF ILLINOIS	)	
	)	Alan I. Marcus,
	)	Administrative Law Judge

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCE:** Mr. David Kaplansky of Schwartz & Freeman appeared on behalf of the Sherwood Conservatory of Music.

**SYNOPSIS:** This proceeding raises the limited issue of whether 4,200 square feet of the subject parcel, which had not been previously exempted from real estate taxes pursuant to Departmental Docket No. 85-16-203, should be exempt from 1994 real estate taxes under 35 ILCS 200/15-65.<sup>1</sup> In relevant part, that provision states as follows:

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<sup>1</sup>. In *People ex rel Bracher v. Salvation Army*, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption will depend on the statutory provisions in force at the time for which the exemption is claimed. This applicant seeks exemption from 1994 real estate taxes. Therefore, the applicable statutory provisions are those contained in the Property Tax Code (35 ILCS 200\1-1 et seq).

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

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(a) institutions of public charity.

The controversy arises as follows:

On June 2, 1987, the Department of Revenue (hereinafter the "Department") issued a final administrative decision in docket no. 85-16-203. Said decision found that most of the subject parcel was exempt from real estate taxation pursuant to the charitable provisions then found in Ill. Rev. Stat. ch. 120, Section 500.7, which, for present purposes, are substantially similiar to Section 200/15-65. However, the decision expressly denied exemption as to those 4,200 square feet (or 16% of the subject parcel) that were subject to a leasehold.

Sherwood Conservatory of Music (hereinafter "Sherwood" or the "applicant") maintained this partial exemption by filing appropriate affidavits. (Applicant Ex. No. 17A and 17B). However, the lessee subsequently terminated its lease, whereupon applicant filed a real estate exemption complaint with the Cook County Board of Tax Appeals. Said complaint was filed pro-se on June 30, 1995 and sought to exempt the 4,200 square feet (hereinafter referred to as "the portion in dispute" or the "portion") under unspecified statutory provisions.

The Board reviewed applicant's complaint and recommended to the Department that the portion in dispute be granted a partial year's exemption. On December 7, 1995, the Department rejected this

recommendation by issuing a certificate finding that the portion was not in exempt use.

Sherwood filed a timely request for hearing on January 31, 1996. After holding a pre-trial conference, the Administrative Law Judge conducted an evidentiary hearing on October 11, 1996. Following submission of all evidence and a careful review of the record, it is recommended that the portion in dispute be exempted from real estate taxes for 33% of the 1994 tax year.

**FINDINGS OF FACT:**

1. The Department's jurisdiction over this matter and its position therein, namely that the portion in dispute was not in exempt use during 1994, are established by the admission into evidence of Dept. Group Ex. No. 1 and Dept. Ex. No. 2.

2. The subject parcel is located at 1014 South Michigan, Chicago, IL 60605. It is identified by Permanent Index Number 17-15-307-026 and consists of a four-story, 28,000 square foot community music school. Dept. Group Ex. No. 1.

3. Applicant used 23,800 square feet, or 84% of total building space, for purposes related to the music school. The remaining 4,200 square feet, or 15% of total building space, was demised to the 1016 South Michigan Corporation (hereinafter "1016 SMC" or the "lessee"). Dept. Group Ex. No. 1; Applicant Ex. No. 16; Tr. pp. 72-77.

4. On June 2, 1987, the Department of Revenue issued a final administrative decision in docket No. 85-16-203. Said decision held that 84% of the subject parcel was subject to exemption under Ill. Rev. Stat. ch. 120, Section 500.7. Administrative Notice.

5. Sherwood maintained this partial exemption by filing appropriate affidavits with the proper assessing authorities. Applicant Ex. Nos. 17A and 17B.

6. The lessee operated a restaurant on the demised premises. Its lease was scheduled to run for a term that began November 1, 1991 and ended October 31, 1994. However, sometime before May of 1994, the lessee notified applicant's Executive Director, Susan Kincaid, that 1016 SMC did not intend to renew the lease. Applicant Ex. No. 16; Tr. pp. 78-79; 133-134.

7. On May 6, 1994, applicant's Board of Trustees (hereinafter the "Board") voted to reclaim the demised premises for its own use. This vote was based on the Board's determination that applicant's need for additional operating space outweighed any economic benefits of being a landlord to a commercial tenant. Applicant Ex. No. 18A.

8. 1016 SMC subsequently advised Ms. Kincaid that it intended to vacate the premises at the end of August, 1994, two months earlier than planned. Ms. Kincaid notified the Board of this development at its August 6, 1994 meeting, whereupon Sherwood made arrangements to remove all furniture, fixtures, etc. associated with the lessee's use. Applicant Ex. No. 18B; Tr. p. 139, 204, 206, 208.

9. Sherwood actually began this process, which involved dismantling and removing booths, banquettes, built-in tables, light fixtures, carpeting, stoves, refrigerators, a hot water heater, an ice cream freezer, cabinets, etc., at the begining of September, 1994. Applicant Ex. Nos. 11D, 11F - 11H; Tr. pp. 204 - 206.

10. On September 6, 1994, Sherwood entered into a pest control service agreement with Orkin Exterminating Company, Inc, (hereinafter

"Orkin"). Said agreement provided that Orkin would provide bi-monthly pest control services at that portion of the subject property which applicant formerly leased to 1016 SMC. Applicant Ex. No. 21.

11. Soon after the furniture was removed, Ms. Kincaid began using the portion in dispute as additional office space. Ms. Kincaid regularly used the portion to work on reports and other administrative matters, (e.g. fund-raising, strategic planning, etc.), which she performed in the normal course of her regularly assigned job duties. Tr. pp. 191 - 193.

12. Applicant also used the portion in dispute to store newly-purchased furniture, cases of food and snacks that were consumed by children in applicant's string orchestra, janitorial supplies, road salt, snow removal paraphernalia and land landscaping equipment. Tr. pp. 188 - 190.

13. Sherwood also stored donated equipment in the former restaurant area. Applicant often refused offers of such equipment before 1016 SMC vacated the leasehold premises because Sherwood did not have adequate space to store any potential donations. *Id.*

14. Due to a lack of space, applicant's employees also used the portion in dispute as a work area. Their tasks included assembling newly-purchased furniture and painting large signs that applicant used at holiday parties and fund-raisers. Tr. pp. 189 - 90.

15. The portion in dispute was also part of a space-needs analysis undertaken by various committees of applicant's board. The board undertook this analysis, which pertained to the entire

building, after learning that 1016 SMC would be vacating the leasehold premises. Tr. pp. 87 - 91.

16. The board began the formal part of its analysis by hiring an architectural firm, Environ, Inc., (hereinafter "Environ") to study applicant's space needs and develop a facility plan for Sherwood. Tr. pp. 87 - 90.

17. Environ began its work during the summer of 1994. It conducted a facilities assessment before 1016 SMC vacated the demised premises and proceeded to interview members of applicant's faculty, evaluate Sherwood's space needs and develop a plan which presented space-use alternatives for the entire building. Tr. pp. 89-92, 95-96, 101-103, 127, 131-32.

18. Environ presented a preliminary facilities assessment and space plan report to the board on October 18, 1994. This report indicated that costs of building or renting a more modern facility were far greater than the cost of renovation. However, the report also stated that the existing building configuration could not accommodate applicant's program growth and that any necessary renovations (including those to the portion in dispute) would cost between 2.5 and 3 million dollars. Applicant Group Ex. 18, Doc. D.

19. After the board received Environ's preliminary report, it began interviewing fund-raising consultants that specialized in capital campaigns. In February of 1995, the Board authorized one of its committees to select and hire an appropriate consultant. Tr. pp. 153, 172 - 173.

20. On March 14, 1995, the board entered into a contract with the Alford Group, (hereinafter "Alford"), which provided that Alford

was to advise and assist applicant in organizing a capital campaign to raise money for the recommended renovations. Tr. pp. 171 - 174.

21. Alford submitted its proposals for applicant's capital campaign to the Board on July 13, 1995. Sherwood subsequently began implementing most, but not all, of Alford's recommendations. Applicant Ex. No. 20, Doc. C; Tr. pp. 173 - 181.

22. Applicant was unable to raise the necessary funds by the summer of 1996. Accordingly, its board decided that applicant's space needs would be best served by adopting the portion in dispute for additional uses, at least until such time as the originally-planned renovations could be completed. Tr. pp. 115 - 119, 161 - 164.

23. The board subsequently appointed an *ad hoc* committee that worked with Environ to develop a modified plan for use of the portion in dispute. This plan, which includes immediate construction of two multi-purpose classrooms that are to be integrated into the original renovation scheme, has not been completely effectuated as of the date of this Recommendation. Applicant Ex. No. 19C; Tr. pp. 115-119, 161-164, 184-185.

#### **CONCLUSIONS OF LAW:**

On examination of the record established this applicant has demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the portion in dispute from real estated taxes for 33% of the 1994 assessment year. Accordingly, under the reasoning given below, the determination by the Department that the portion in dispute does not satisfy the requirements for exemption set forth in 35 **ILCS** 200/15-65 should be

partially reversed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code 35 **ILCS** 200/1-3 et seq. The provisions of that statute that govern disposition of the instant



proceeding are found in Section 200/15-65. In relevant part, that provision states as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

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(a) institutions of public charity.

Here, the final administrative decision in docket No. 85-16-203, of which I take administrative notice, establishes that applicant is an "institution of public charity" within the meaning of Section 200/15-65, owned the entire subject parcel throughout the 1994 assessment year and used 84% thereof for exempt purposes during that time. Therefore, the remainder of this Recommendation must focus on analyzing whether the remaining 16% was in actual, exempt use during 1994.

In Evangelical Hospitals Corporation v. Department of Revenue, 233 Ill. App.3d 225 (2nd Dist. 1991), (hereinafter "EHC") the court analyzed whether a leasehold interest, held by appellant's non-exempt for-profit affiliate, satisfied the exempt use requirements set forth in the applicable version of Section 200/15-65. The leasehold covered approximately 18,000 square feet and was divided into the following uses: first, an area used to provide management to four of appellant's hospitals; second, a pharmacy; third, various physician offices and high tech medical centers; and fourth, an area used for purposes related to joint ventures undertaken by the lessee and various physicians.

The court held in favor of exemption. However, it limited the exemption to those portions of the subject property which were actually used to provide management and administrative services to the appellant. According to the court, only these portions had been proven to be "reasonably necessary" for appellant's efficient administration. EHC, *supra* at 574. The remainder were found not to be in exempt use based on various failures of proof. *Id.* at 574 - 575. See also, Memorial Child Care v. Department of Revenue, 238 Ill. App.3d 985 (4th Dist. 1992), (hereinafter "MCM") (appellant's child care center held tax exempt based on finding that subject property was "reasonably necessary" to further the exempt purposes of appellant's exempt affiliate, Memorial Medical Center). MCM at 991 - 993.

The instant record establishes that the portion in dispute was let for rent until September 1, 1994. Such a use is inherently commercial, and therefore, cannot provide a factually sufficient basis for exempting the aforementioned portion. See, People ex. rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924); The Salvation Army v. Department of Revenue, 170 Ill.App.3d 336 (2nd Dist. 1988), leave to appeal denied. However, the record further establishes that Sherwood began using the portion in dispute for storage and other purposes related to its internal operations after its lessee vacated the demised premises.

These post-lease uses helped to alleviate applicant's short-term need for additional operating space. Accordingly, I conclude that such uses, which included providing Sherwood with supplemental office and work space, were reasonably necessary to further applicant's

already exempt operations. Therefore, such uses qualify as exempt under the reasoning set forth in EHF and MCM. However, because applicant did not begin to engage in such uses until September 1, 1994, I conclude that the exemption should be limited to 33% of the 1994 assessment year. See, 35 **ILCS** 200/9-185.<sup>2</sup>

In light of the above conclusion, I find it unnecessary to engage in protracted analysis of applicant's alternative contention, which is that the portion should be exempted pursuant Weslin Properties v. Department of Revenue, 157 Ill. App.3d 580 (2nd Dist. 1987). There, the court held that appellant's health care facility could be exempted from real estate taxes even though it was under construction during the year in question.

The Weslin holding makes clear that the "charitable use" requirement can be satisfied where the applicant proves that the subject parcel is being developed for exempt purposes. However, the

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<sup>2</sup>.The relevant portion of that provision states as follows:

The purchaser of property on January 1 shall be considered the owner [who is therefore liable for any taxes due] on that day. However, when a fee simple title or lesser interest in property is purchased, granted, taken or otherwise transferred for a use exempt from taxation under this Code, that property shall be exempt from the date of the right of possession, except that property acquired by condemnation is exempt as of the date the condemnation petition is filed. Whenever a fee simple title or lesser interest in property is purchased, granted taken or otherwise transferred from a use exempt from taxation under this Code to a use not so exempt, that property shall be subject to taxation from the date of the purchase or conveyance.

above analysis has demonstrated that the portion in dispute was actually being used for other exempt purposes during 33% of the 1994 assessment year. Consequently, considerations of administrative and judicial economy dictate that it is redundant and therefore unnecessary to determine whether that same portion was in exempt use because it was included in applicant's renovation plans.

WHEREFORE, for all the above-stated reasons, it is my recommendation that the remaining 16% of the subject parcel (or the entirety of the portion in dispute) be exempt from real estate taxes for 33% of the 1994 assessment year.

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Date

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Alan I. Marcus,  
Administrative Law Judge